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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**Docket Number (Optional)  
20295/0210681-US0

First named inventor: Takamasa Ohtsuji

Application No: 10/577,961

Art Unit: 3747

Filed: May 3, 2006

Examiner: A. N. Wilson

Title: TRANSMISSION CONNECTING MECHANISM

Attention: Office of Petitions

**Mail Stop Petition**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions  
Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee**
☐ Small entity – fee \$ \_\_\_\_\_ (37 CFR 1.17(m)). Applicant claims small entity status.  
See 37 CFR 1.27.

☒ Other than small entity – fee \$ 1,540.00 (37 CFR 1.17(m))
**2. Reply and/or fee**A. The reply and/or fee to the above-noted Office action in  
the form of a Response to a Non-Final Office Action of 4/18/07 (identify type of reply):
☐ has been filed previously on \_\_\_\_\_.

☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ \_\_\_\_\_.

☐ has been paid previously on \_\_\_\_\_.

☐ is enclosed herewith.

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## 3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

5. This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application from its original due date of July 18, 2007. The requested extension and fee are as follows:

☒ Three months \$1,110.00 (37 CFR 1.17(a)(3))**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

/Louis DelJuidice – 47,522/

Signature

October 16, 2008

Date

Louis J. DelJuidice

Typed or printed name

47,522

Registration Number, if applicable

DARBY &amp; DARBY P.C.

P.O. Box 770

Church Street Station

New York, New York 10008-0770

Address

(212) 527-7700

Telephone Number

Enclosures: ☒ Fee Payments☒ Reply☐ Terminal Disclaimer Form☒ Additional sheets containing statements establishing unintentional delay☒ Other: Response to Non-Final Office Action mailed on April 18, 2007

**A. THE ABANDONMENT**

The date of abandonment of the subject application is Wednesday, October 19, 2007,<sup>1</sup> as a result of the applicant's / assignee's unintentional failure to timely file a Response through their U.S. representative to a Non-Final Office Action mailed from the PTO on April 18, 2007, that set a three-month Shortened Statutory Period for that Response.<sup>2, 3</sup> As a result of this unintentional abandonment and in accordance with the applicable Rules, the assignee has filed concurrently with this Petition a complete Response to the Office Action and has likewise paid with the Petition the appropriate fee for both the Petition and a three-month time extension for the Response. As detailed in this Petition, the entire delay in filing the required Response, from the initial due date for a Response to the Non-Final Office Action at issue until the filing of this grantable Petition pursuant to Rule 1.137(b), was unintentional.

**B. PARTIES INVOLVED**

1. Applicant / Assignor / Inventor – Takamasa Ohtsuji ("INVENTOR OHTSUJI"), resident of Saitama, Japan, an employee of the original assignee, Komatsu Zenoah Co.;
2. Present Assignee - Husqvarna Zenoah Co., Ltd., 9,<sup>4</sup> Minamidai 1-chome, Kawagoe-shi, Saitama, Japan (Reel 021648, Frame 0631) ("ASSIGNEE ZENOAH") (President, Kazuhiro Aoyagi ("ZENOAH PRESIDENT AOYAGI") (the original assignment from INVENTOR OHTSUJI to original assignee Komatsu Zenoah Co., 9, Minamidai 1-chome, Kawagoe-shi, 350-1192, Japan, is recorded at Reel 017865, Frame 0445);

<sup>1</sup> As discussed *infra*, the date of abandonment of the subject application is Wednesday, October 19, 2007, and NOT Tuesday, July 19, 2007, since the assignee is paying concurrently with this Petition for a three-month time extension, that it unintentionally failed to pay initially at the relevant time. See also n. 3, *infra*.

<sup>2</sup> Papers like the Non-Final Office Action of April 18, 2007, which are in the PTO Prosecution History, are not included as separate Exhibits to this Petition. For some of the non-PTO Prosecution History papers included as separate Exhibits to the Petition (listed chronologically at the end of the Petition), partial redactions may be made to some of the papers because of irrelevant and/or privileged / workproduct information in the papers. While revival of the underlying application is of paramount importance, in doing so neither the applicant nor the assignee intends to waive, either knowingly or inadvertently, attorney client privilege or the workproduct doctrine.

<sup>3</sup> For reasons that will be apparent as discussed later in this Petition, an additional three-month time extension was not sought by the applicant or assignee at the relevant time for the filing of a Response to the Non-Final Office Action, or to take other appropriate action. For that reason, the Petition seeks (and pays concurrently herewith for) at this time the three-month time extension so that, among other things, the Petition may be filed to seek revival of an "unintentionally" abandoned application (which it is), rather than as an "unavoidably" abandoned application. However, if necessary, the assignee will demonstrate why the abandonment was also "unavoidable," even though it is the assignee's position that the Petition itself, and its Exhibits, also show that the abandonment was "unavoidable."

<sup>4</sup> Husqvarna Zenoah Co., Ltd. is the new name of former assignee Zenoah Co., Ltd., as reflected in the assignment papers regarding Husqvarna Zenoah Co., Ltd. See also Assignment of Assignors Interest from original assignor Komatsu Zenoah Co., to Zenoah Co., Ltd., Reel 020216, Frame 0058.

3. Japanese Patent Agent - Mutsumi International Patent Bureau, Bandai Building, 3<sup>rd</sup> Floor, 10-14 Kanda-Awajicho 2-chome, Chiyoda-ku, Tokyo 101-0063, Japan (Mr. Takeo Noguchi, Japanese Patent Attorney) (the "MUTSUMI FIRM");

4. Former U.S. Patent Agent - Everest Intellectual Property Law Group, P.O. Box 708, 3501 Woodhead Drive, Suite 5&6, Northbrook, IL 60062-1852, including Michael S. Leonard, Esq. (No. 31,557) ("ATTORNEY LEONARD" and / or the "EVEREST FIRM"); and

5. Current U.S. Patent Agent - Darby & Darby PC, 250 Greenwich Street, New York, NY 10007-0042, including Louis J. DelJuidice, Esq. (No. 47,522), Marie Collazo (No. 44,085) and the attorneys associated with Customer Number 07278 (the "DARBY FIRM").

### **C. TIMING OF THE PETITION**

M.P.E.P. § 711.03(c).II.D. states the following in relevant part:

The Office does not generally question whether there has been an intentional or otherwise impermissible delay in filing an initial petition pursuant to 37 CFR 1.137(a) or (b), when such petition is filed: (A) within 3 months of the date the applicant is first notified that the application is abandoned; and (2) within 1 year of the date of abandonment of the application.

This Petition is being filed by the DARBY FIRM within one year of the October 19, 2007 date on which the subject application is believed to have been abandoned.<sup>5</sup> As described in detail in the Petition, on information and belief the "date the applicant [wa]s first notified [by the EVEREST FIRM] that the application [wa]s abandoned" was likely January 4, 2008 (Ex. 02). To be on the conservative side and to help assure that the Petition will be granted expeditiously as-filed, the Petition includes a detailed "showing as to how the delay between the date the applicant was first notified that the application was abandoned and the filing of a petition under 37 CFR § 1.137 was ... 'unintentional' ... under 37 CFR § 1.137(b)." M.P.E.P. § 711.03(c).II.D.<sup>6</sup>

<sup>5</sup> See nn. 1 and 3, *supra*.

<sup>6</sup> "Where a petition pursuant to 37 CFR 1.137(a) or (b) is not filed within 3 months of the date the applicant is first notified that the application is abandoned, the Office may consider there to be a question as to whether the delay was unavoidable or unintentional. In such instances,

(A) the Office will require a showing as to how the delay between the date the applicant was first notified that the application was abandoned and the date a 37 CFR 1.137(a) petition was filed was "unavoidable;" or

(B) the Office may require further information as to the cause of the delay between the date the applicant was first notified that the application was abandoned and the date a 37 CFR 1.137(b) petition was filed, and how such delay was 'unintentional.'

**1. WHEN THE "APPLICANT" WAS FIRST NOTIFIED THAT THE APPLICATION WAS ABANDONED**

The subject application was filed in the PTO on May 3, 2006, as requested originally by the MUTSUMI FIRM which had, at that time, an ongoing relationship with ATTORNEY LEONARD relative to some clients of the MUTSUMI FIRM, including ASSIGNEE ZENOAH. In effect, therefore, INVENTOR OHTSUJI permitted the original and present assignees to control prosecution of the application, and as a result the EVEREST FIRM "communicated" indirectly to INVENTOR OHTSUJI and the assignees through the MUTSUMI FIRM.

On April 18, 2007, the Non-Final Office Action in the subject application was mailed by the PTO to the Law Firm of Bell, Boyd & Lloyd, LLP (the "BELL BOYD FIRM"), whose mailing address on the Office Action is Chicago, Illinois.<sup>7</sup> Based upon the information and belief of the MUTSUMI FIRM, ATTORNEY LEONARD, whose mailing address at the EVEREST FIRM on various papers in the PAIR prosecution history of the subject application is Northbrook, Illinois,<sup>8</sup> (i) was once an attorney at the BELL BOYD FIRM, and (ii) moved to the EVEREST FIRM in or about 2004. Upon the further information and belief of the MUTSUMI FIRM, the subject application was handled by the EVEREST FIRM from the beginning based on the fact that the MUTSUMI FIRM asked ATTORNEY LEONARD to initiate the U.S. national entry of the subject application on or about April 25, 2006. However, as a result of activities concerning the preparation of this Revival Petition, the MUTSUMI FIRM has come to recognize for the first time that the Power of Attorney it sent to ATTORNEY LEONARD on or about April 25, 2006 with the subject application documents recited the name of ATTORNEY LEONARD's former firm at that time, the BELL BOYD FIRM, rather than his actual firm at that time, the EVEREST FIRM. Nevertheless, the Power of Attorney provided originally by the MUTSUMI FIRM to ATTORNEY LEONARD was believed at that time to have been given also to ATTORNEY LEONARD himself,<sup>9</sup> and thus, consistent with the original Power, ATTORNEY

To avoid delay in the consideration of the merits of a petition under 37 CFR 1.137(a) or (b) in instances in which such petition was not filed within 3 months of the date the applicant was first notified that the application was abandoned, applicants should include a showing as to how the delay between the date the applicant was first notified by the Office that the application was abandoned and the filing of a petition under 37 CFR 1.137 was (A) 'unavoidable' in a petition under 37 CFR 1.137(a); or (B) 'unintentional' in a petition under 37 CFR 1.137(b)."

<sup>7</sup> See n. 2, *supra*.

<sup>8</sup> According to Mapquest ([www.mapquest.com](http://www.mapquest.com)), Northbrook, IL is 26.79 miles from Chicago, IL, based upon the mailing addresses indicated on the PTO papers of the Everest Intellectual Property Law Group and Bell, Boyd, & Lloyd, LLP (<http://www.mapquest.com/maps?1c=Northbrook&1s=IL&1z=60065&2c=Chicago&2s=IL&2z=60690>), last visited on October 8, 2008.

<sup>9</sup> See generally Rule 32(c), MPEP Section 402.

LEONARD apparently signed his name and PTO registration number, with the name and address of the EVEREST FIRM, on several papers in the PAIR prosecution history of the subject application on EVEREST FIRM letterhead. While these activities apparently did contribute to both the Non-Final Office Action and the subsequent Notice of Abandonment of the application<sup>10</sup> to be mailed to the BELL BOYD FIRM at its Chicago address, rather than to the EVEREST FIRM at its Northbrook address, these activities are not the direct or major basis of the underlying Petition.

Around November 11, 2007, the MUTSUMI FIRM learned for the first time from its independent review of the "Bibliographic Data" and "Transaction History" pages of Public PAIR that a Non-Final Office Action dated April 18, 2007 was mailed from the PTO in the subject application – which the MUTSUMI FIRM confirmed in a facsimile letter sent on November 16, 2007 to ATTORNEY LEONARD at the EVEREST FIRM. Ex. 01. The facsimile letter stated the following in part:

As you would be aware, [a] non-final [office] action dated April 18, 2007 was issued for the above-captioned application, the due date of which was on October 18, 2007, which is overdue. According to the USPTO [Public PAIR] web site, it is not indicated as abandoned. However, if the response is not filed in time, the application usually lapses. Please let us know the status of this application immediately.

Emphasis added. Thus, in light of the fact that the Non-Final Office Action was not previously forwarded at the time to the MUTSUMI FIRM by ATTORNEY LEONARD and that the MUTSUMI FIRM had realized, at about the same time, from its experiences regarding Application Serial No. 11/199,297 (also entrusted by the MITSUMI FIRM to ATTORNEY LEONARD),<sup>11</sup> that ATTORNEY LEONARD apparently had started losing track of other patent applications entrusted to him by the Firm, Mr. Takeo Noguchi of the MUTSUMI FIRM and his assistant traveled to Chicago and met with ATTORNEY LEONARD on or about December 5, 2007. Based upon the understanding of the MUTSUMI FIRM, as a result of the December 5<sup>th</sup> Chicago meeting ATTORNEY LEONARD then forwarded the Non-Final Office Action to the Firm with his letter to the Firm dated January 4, 2008 (Ex. 02), which stated the following in relevant part:

<sup>10</sup> See n. 2, *supra*.

<sup>11</sup> On April 4, 2008, a Revival Petition was filed in the PTO regarding Application Serial No. 11/199,297. On October 6, 2008, a telephone conference was held with PTO Petitions Examiner April Wise (571.272.1642), regarding the status of the '297 Revival Petition, primarily because the April 4<sup>th</sup> filing of the Petition was not reflected in Public PAIR. After Ms. Wise confirmed that the '297 Petition had been filed and that, coincidentally, she was to soon address the Petition, Ms. Wise was informed by counsel that the subject Petition would be filed shortly which, in many respects, would be factually similar to the '297 Petition. Accordingly, Ms. Wise asked counsel to telephone her when the subject Petition was filed since, among other things, counsel felt that consideration of the subject Petition by the same Petitions Examiner assigned to the '297 Petition might be beneficial to the expeditious and consistent consideration of both Petitions.

As you are aware the U.S. Patent Office issued a non-final Office Action for this case, a copy of which is enclosed with its attachments. The Examiner set a three month time period for response to the Office Action. Accordingly, a response was due to the Patent Office by July 18, 1007; however, we did not receive the Office Action from the USPTO...<sup>12</sup> Please provide your instructions on responding to the Office Action and **we will respond accordingly and file a petition to revive the patent application.**<sup>13</sup>

Emphasis added. When the MUTSUMI FIRM received this January 4<sup>th</sup> letter from ATTORNEY LEONARD, and its attachments, it was the first time that the Firm actually saw the Non-Final Office Action. Thus, the Firm instructed ATTORNEY LEONARD, in its followup letter to him dated January 28, 2008 (Ex. 03), to file a Revival Petition "as soon as possible" with the Proposed Amendment and Response to the Non-Final Office Action that the Firm sent with the January 28<sup>th</sup> letter, receipt of which was acknowledged by the EVEREST FIRM by a return facsimile date-stamped with what appears to be January 30<sup>th</sup> (Ex. 04).

Unfortunately, however, despite many unanswered letters, facsimiles, emails, and telephone calls from the MUTSUMI FIRM to ATTORNEY LEONARD regarding ATTORNEY LEONARD's promise in his January 4<sup>th</sup> letter to file a Revival Petition and his version of the Proposed Amendment and Response to the Non-Final Office Action sent by the MUTSUMI FIRM with the Firm's January 28<sup>th</sup> letter, neither one was ever filed by ATTORNEY LEONARD. To be more specific, starting with an email followup from the MUTSUMI FIRM to ATTORNEY LEONARD on February 7, 2008 (Ex. 05) ("[a]s to 10/577,961, we have asked you to file a Petition to [R]evive on January 28, 2008 ... [so p]lease let us know whether you have filed it or not.") through and including an email followup on September 29, 2008 (Ex. 20) ("I called your office and your cell-phone yesterday on September 28, 2008 in Japan time ... [u]nfortunately, I could not get through, but left messages on the automatic message recorder to contact our office ... [so w]e need to know whether or not you have filed the [P]etition to [R]evive for the application No. 10/577,961 ... [and we ask you to p]lease kindly let us know immediately ... I will call again."), the MUTSUMI FIRM tried on at least about **28 occasions**<sup>14</sup> to contact ATTORNEY LEONARD and confirm his filing of these papers – and / or urge him to do so. **NOT ONCE DID ATTORNEY LEONARD RESPOND to any of these inquiries.**

<sup>12</sup> Again, as stated previously in this Petition, the probable reason that ATTORNEY LEONARD stated in his January 4<sup>th</sup> letter to the MUTSUMI FIRM that "we did not receive the Office Action from the USPTO" is that the Office Action appears to have been sent by the PTO to the BELL BOYD FIRM at its Chicago address. Likewise, the MUTSUMI FIRM never saw or received the formal "Notice of Abandonment" of the subject application mailed on February 12, 2008 since, among other things, the Abandonment Notice was mailed by the PTO to the BELL BOYD FIRM at its Chicago address, according to Public PAIR.

<sup>13</sup> At the end of this Petition and for convenience purposes, a chronology of events relevant to the Petition is provided, with excerpts from the communications underlying those events. *But see* n. 2, *supra*.

<sup>14</sup> To keep the text of this Petition to a reasonable length, all of the relevant followup communications by the MUTSUMI FIRM are not detailed in the text of the Petition. However, as mentioned in the preceding footnote,

Thus, the MUTSUMI FIRM was left with no alternative but to retain new counsel, i.e., the DARBY FIRM, to prepare and file both papers. In particular, on October 1, 2008<sup>15</sup> the MUTSUMI FIRM sent a facsimile letter to the DARBY FIRM stating the following:

The above-captioned application has been managed by Everest Intellectual Property Law Group ... Unfortunately, we have not been able to contact the representative of the Everest Intellectual Property Law Group at all, recently ... So, we would like to transfer this case to your firm .. The case was abandoned due to the failure to respond to a non-final office action on October 18, 2007 and we have asked the former representative to file a response and a [P]etition to [R]evive on January 28, 2008. To this date, we have not received any report about filing the response or the [P]etition. According to the web page of the USPTO, no response or [P]etition seems to be filed so far. **We would like to ask you to find out the current situation of the case including whether or not the response and the [P]etition has [sic: have] been filed and let us know whatever you can find as soon as possible,** and then, kindly file a [P]etition to [R]evive along with the response to the non-final office action. Our proposed amendment to the non-final office action is included in the enclosed file wrapper ... Although we have asked the former representative to file a request to register the change of name, the request might not have been filed, yet. So, please let us know whether or not it has been filed. If it has not been filed, we will send you a certificate of all historical records and its English translation. Please take care of this matter at your firm as well.

Ex. 21 (underling in the original). Later that same day, the DARBY FIRM acknowledged receipt of the MUTSUMI FIRM takeover request (Ex. 22), noting in part that "[a]s requested, we looked into the electronic file wrapper for this case and confirm that no [P]etition to [R]evive of the application appears to have been filed to date. We will review your proposed amendment upon receipt and promptly attend to preparation and filing of a [P]etition to [R]evive the application."

2. **HOW THE DELAY IN DISCOVERY OF THE ABANDONED STATUS OF THE APPLICATION OCCURRED DESPITE THE EXERCISE OF OF DUE CARE OR DILIGENCE ON THE PART OF THE APPLICANT**

As detailed in the previous Section, the MUTSUMI FIRM, on behalf of INVENTOR OHTSUJI and ASSIGNEE ZENOAH, exercised due care and diligence in determining the status of the subject application through the EVEREST FIRM, with which it had a long time relationship, to maintain the pendency of the application before the PTO and, eventually, to obtain its allowance.

At no time did INVENTOR OHTSUJI, ASSIGNEE ZENOAH, or the MUTSUMI FIRM, intend to abandon the application. To the contrary, their actions speak more loudly than their words in this Petition. In particular, the foregoing contemporaneous actions are the antithesis of an intent to abandon the

excerpts from the communications appear at the end of the Petition, as well as in the communications themselves of Exhibits 04 – 20.

<sup>15</sup> The typed date on the facsimile letter is September 30, 2008. However, it was received by the DARBY FIRM with the "September 30" crossed out and with –October 1– written in by hand by another. Ex. 21.



application; they reflect a genuine, consistent, and diligent effort to maintain the pendency of the subject application and to obtain its allowance by the PTO.

3. **THE DATE OF ABANDONMENT**

As stated previously, this Petition is being filed within one year of the October 19, 2007 date on which the subject application appears to have been abandoned.<sup>16</sup>

**D. CONCLUSION**

For the foregoing reasons, because the entire delay in filing the required Response to the Non-Final Office Action mailed on April 18, 2007, until the filing of this grantable Petition pursuant to Rule 1.137(b), was unintentional, the Petition should be granted, and the concurrently-filed Response and three-month time extension should be processed forthwith.

**CHRONOLOGY AND LIST OF ATTACHED EXHIBITS**

**2007**

- 04-18-07**      Non-Final Office Action mailed to Bell, Boyd & Lloyd, LLP Law Firm from U.S. PTO  
-      Three month SSP set.
- 11-16-07**      Letter from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest  
                 Intellectual Property Law Group (Atty. Michael S. Leonard) – Ex. 01  
-      “We really need your response on the above-captioned application.”  
-      “As you would be aware, non-final action dated April 18, 2007 was issued for the above-captioned application, the due date of which was on October 18, 2007, which is overdue. According to the USPTO web site, it is not indicated as abandoned. However, if the response is not filed in time, the application usually lapses. Please let us know the status of this application immediately.”  
-      Attached PTO Public PAIR “Bibliographic Data” for 10/577,961 (dated 11-11-07)  
-      Attached PTO Public PAIR “Transaction History” for 10/577,961 (dated 11-11-07)

**2008**

- 01-04-08**      Letter to Mutsumi International Patent Bureau (Takeo Noguchi) from Everest  
                 Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 02  
-      “As you are aware the U.S. Patent Office issued a non-final Office Action for this case, a copy of which is enclosed with its attachments. The Examiner set a three month time period for response to the Office Action. Accordingly, a response was due to the Patent Office by July 18, 1007; however, we did not receive the Office Action from the USPTO.”  
-      “Please provide your instructions on responding to the Office Action and we will respond accordingly and file a petition to revive the patent application.”
- 01-28-08**      Letter from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest  
                 Intellectual Property Law Group (Atty. Michael S. Leonard) – Ex. 03  
-      “Thank you very much for your letter of January 4, 2008 enclosing the non-final Office Action.”

<sup>16</sup> See also nn. 1, 3, *supra*.

- "As you are aware, the duration to respond to the office action has been expired. [sic] Please file a Petition to Revive along with the response [i.e., the Proposed Amendment and Remarks attached to this letter] as soon as possible."
- 01-30-08** Letter to Mutsumi International Patent Bureau (Takeo Noguchi) from Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 04
  - Acknowledgement of 1-28-08 letter from Mutsumi International
- 02-07-08** Email from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 05
  - "As to 10/577,961, we have asked you to file a Petition to [R]evive on January 28, 2008. Please let us know whether you have filed it or not."
- 02-12-08** Letter to Bell, Boyd & Lloyd, LLP Law Firm from U.S. PTO
  - "Notice of Abandonment" for failure to timely file a proper reply to the Office Action mailed on -4-18-07
- 02-13-08** Email from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 06
  - "As to 10/577,961, we have asked you to file a Petition to [R]evive on January 28, 2008. Please let us know whether you have filed it or not."
- 03-10-08** Email from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 07
  - "As to 10/577,961 (your ref. No. 115008-009), please let us know if you have filed a Petition to [R]evive."
  - "We would appreciate your honest attention to these matters."
- 03-11-08** Email from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 08
  - "As to 10/577,961 (your ref. No. 115008-009), please let us know if you have filed a Petition to [R]evive."
  - "Please acknowledge receipt[t] of this e-mail by return e-mail."
- 03-18-08** Letter from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 09
  - "Thank you for your e-mail of March 15 47, 2008."
  - With regard to the case of 10/577,961, please file a [P]etition to [R]evive as soon as possible in accordance with our letter of January 28, 2008."
- 06-11-08** Email from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 10
  - "Further to our e-mail of March 18, 2008, we would like to know whether or not you have filed the [P]etition to [R]evive the application No. 10/577,961."
  - "Please let us know immediately."
- 06-16-08** Email from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 11
  - "Further to our e-mail of June 11, 2008, we would like to remind you that the Petition to Revive for the application No. 10/577,961 must be filed immediately."
  - "Please let us know the current status of this application."
  - "Kindly acknowledge receipt of this e-mail."
- 06-19-08** Email from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 11
  - "Please let us know whether or not you have filed the [P]etition to [R]evive."

-	"As you are aware, about three months have passed since we have remind[ed] you to file it as soon as possible."
-	"Please acknowledge [sic] receipt of this e-mail."
<b>06-20-08</b>	<u>Email from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 11</u>
-	"We would appreciate if you could at least acknowledge receipt of this e-mail."
<b>06-23-08</b>	<u>Email from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 1</u>
-	"We would appreciate your prompt response to this matter."
<b>06-25-08</b>	<u>Email from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 12</u>
-	"With regard to the Petition to Revive for application No. 10/577,961, we really need to know what you have done to this date in order to report to the client."
-	"We would appreciate it very much if you could return the e-mail stating your effort even in a short sentence."
<b>07-02-08</b>	<u>Facsimile from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 13</u>
-	"With regard to the above-captioned application, you must be quite aware that you have to file a Petition to Revive as we have requested you in our letter of March 18, 2008. In addition, the name of the assignee should be changed to [sic: from] Zenoah [C]o., Ltd. To Husqvarna Zenoah Co., Ltd. as we have requested you in our letter of April 21, 2008."
-	"In spite [sic: spite] of our several reminders by fax and e-mail, we have not received any response from your side. Now, we desperately need your report about the proceedings of this case. We would appreciate your sincere attention to this matter."
-	"Please be so kind to acknowledge receipt of the enclosure by return fax."
<b>07-04-08</b>	<u>Facsimile from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 13</u>
-	Reminder facsimile from Mutsumi regarding 07-02-08 facsimile.
<b>07-07-08</b>	<u>Facsimile from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 13</u>
-	Reminder facsimile from Mutsumi regarding 07-02-08 facsimile.
<b>07-30-08</b>	<u>Facsimile from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 13</u>
-	Reminder facsimile from Mutsumi regarding 07-02-08 facsimile.
<b>08-06-08</b>	<u>Facsimile from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 13</u>
-	Reminder facsimile from Mutsumi regarding 07-02-08 facsimile.
<b>08-11-08</b>	<u>Email from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 14</u>
-	"With regard to the Petition to Revive and Change of Name in relation to the application No. 10/577961, please let us know whether or not you have filed them with the USPTO."
-	"If you feel you can not handle it, please inform us immediately. If you are able to handle it, please let us know when it will be completed."
<b>08-12-08</b>	<u>Email from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 15</u>
-	"With regard to the Petition to Revive of 10/577,961, we beg you to inform us whether you have filed the petition."
-	"If it has been left abandoned for [a] long time, it would become more difficult to convince the USPTO of an unintentional failure."

- "Please immediately inform us of the current proceedings in this matter. If you firm is no longer functioning, please honestly let us know."
- 08-12-08** Facsimile from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 13
  - Reminder facsimile from Mutsumi regarding 07-02-08 facsimile.
- 08-13-08** Email from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 16
  - "With regard to the Petition to Revive of 10/577,961, we beg you to inform us whether you have filed the petition. If it has been left abandoned for [a] long time, it would become more difficult to convince the USPTO of an unintentional failure. Please immediately inform us of the current proceedings in this matter. If you firm is no longer functioning, please honestly let us know."
  - "Our office will be closed from August 14 to 17, 2008. So, we would expect your response in the morning on August 18, 2008 in Japan time."
- 08-19-08** Email from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 17
  - "I have called your office and your mobile phone today. Unfortunately, both calls were connected to the answering machine. Mr. Noguchi would like to have your report about the [P]etition to [R]evive of US application No. 10/577,961."
  - "We would appreciate your immediate response to this e-mail."
- 08-22-08** Email from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 18
  - "Mr. Noguchi would like to have your report about the [P]etition to [R]evive of US application No. 10/577,961."
  - "We would appreciate your immediate response to this e-mail."
- 09-09-08** Email from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 19
  - "As we have asked you several times by mail and fax and on the phone, Mr. Noguchi would like to contact you as soon as possible. It is about the [P]etition to [R]evive of the US application No. 10/577,961."
  - "We [sic] let us know the current status of this abandoned application and what you have done to this date."
- 09-10-08** Facsimile from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 13
  - Reminder facsimile from Mutsumi regarding 07-02-08 facsimile.
- 09-29-08** Email from Mutsumi International Patent Bureau (Takeo Noguchi) to Everest Intellectual Property Law Group (Atty. Michael S. Leonard, No. 37,557) – Ex. 20
  - "I called your office and your cell-phone yesterday on September 28, 2008 in Japan time. Unfortunately, I could not get through, but left messages on the automatic message recorder to contact our office."
  - "We need to know whether or not you have filed the [P]etition to [R]evise for the application No. 10/577,961. Please kindly let us know immediately."
  - "I will call again."
- 10-01-08<sup>17</sup>** Facsimile from Mutsumi International Patent Bureau (Takeo Noguchi) to Darby & Darby – Ex. 21
  - "The above-captioned application has been managed by Everest Intellectual Property Law Group."

<sup>17</sup> The typed date on this Exhibit is September 30, 2008. However, it was received by Darby & Darby with the "September 30" crossed out and with –October 1– written in by hand by an entity.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

- "Unfortunately, we have not been able to contact the representative of the Everest Intellectual Property Law Group at all, recently."
- "So, we would like to transfer this case to your firm."
- "The case was abandoned due to the failure to respond to a non-final office action on October 18, 2007 and we have asked the former representative to file a response and a [P]etition to [R]evive on January 28, 2008. To this date, we have not received any report about filing the response or the [P]etition. According to the web page of the USPTO, no response or [P]etition seems to be filed so far. We would like to ask you to find out the current situation of the case including whether or not the response and the [P]etition has [sic: have] been filed and let us know whatever you can find as soon as possible, and then, kindly file a [P]etition to [R]evive along with the response to the non-final office action. Our proposed amendment to the non-final office action is included in the enclosed file wrapper." (underlining in the original)
- "Although we have asked the former representative to file a request to register the change of name, the request might not have been filed, yet. So, please let us know whether or not it has been filed. If it has not been filed, we will send you a certificate of all historical records and its English translation. Please take care of this matter at your firm as well."

**10-01-08**      Facsimile to Mutsumi International Patent Bureau (Takeo Noguchi) from Darby & Darby (Marie Collazo) – Ex. 22

- "Thank you for your fax of today regarding our takeover of the subject application."
- "As requested, we looked into the electronic file wrapper for this case and confirm that no [P]etition to [R]evive of the application appears to have been filed to date. We will review your proposed amendment upon receipt and promptly attend to preparation and filing of a [P]etition to [r]evive the application."